

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

TANIA PICHARDO, JENNIFER JONES,
individually and on behalf of others similarly
situated,

Plaintiff,

v.

ONLY WHAT YOU NEED, INC.,

Defendant.

Case No: 1:20-cv-00493-VEC

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT ONLY WHAT
YOU NEED, INC.'S MOTION TO DISMISS FIRST AMENDED COMPLAINT**

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*Attorney for Defendant Only What
You Need, Inc.*

Defendant Only What You Need, Inc (“Only What You Need”) hereby requests that the Court take judicial notice of certain regulations and guidelines promulgated by the U.S. Food and Drug Administration, pursuant to Rule 201 of the Federal Rules of Evidence, for the reasons outlined below.

ARGUMENT

A district court “may judicially notice facts that are ‘not subject to reasonable dispute because [they] ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.’” *In re Frito-Lay N. Am., Inc. All Nat. Litig.*, No. 12-MD-2413 RRM RLM, 2013 WL 4647512, at *4 (E.D.N.Y. Aug. 29, 2013) (quoting Fed. R. Evid. 201(b)(2)). Here, Daily Greens requests that the Court take judicial notice of two types of documents: (1) the contents of certain sections of the Code of Federal Regulations; and (2) various publicly available guidelines, documents and websites of the U.S. Food and Drug Administration (“FDA”). Both types of documents are judicially noticeable.

First, courts may properly take notice of the contents of the Federal Register and Code of Federal Regulations. *Id.*; 44 U.S.C. § 1507 (“The contents of the Federal Register shall be judicially noticed . . . ”); 44 U.S.C. § 1510 (The Code of Federal Regulations is a “special or supplemental edition[] of the Federal Register,” and thus included within 44 U.S.C. § 1507).

Second, courts may also take judicial notice of federal “agency letters, policy and guidance documents, websites, and other agency data made available to the public outside of the Federal Register by administrative agencies.” *In re Frito-Lay*, 2013 WL 4647512, at *4; *see also Porazzo v. Bumble Bee Foods, LLC*, 822 F. Supp. 2d 406, 411–12 (S.D.N.Y. 2011); *Cortec Indus., Inc. v. Sum Hldg. L.P.*, 949 F.2d 42, 48 (2d Cir. 1991) (holding in ruling on “a motion to dismiss complaint alleging securities fraud, [district court] may review and consider public

disclosure documents required by law to be and which actually have been filed with the SEC . . .”); *Thomas v. Westchester Cty. Health Care Corp.*, 232 F. Supp. 2d 273, 276 (S.D.N.Y. 2002) (when ruling on a motion to dismiss, “a district court may take judicial notice of, among other things, ‘records and reports of administrative bodies.’” (citation omitted)).

Accordingly, Only What You Need requests that the Court take judicial notice of the following documents attached hereto as Exhibits.

Exhibit 1: Pichardo v. Fordham Hill Garage Owners Corp., et al., Case No. 0022917/2016 (Bronx Borough Supreme Ct.)

Exhibit 2: Pichardo v. Bronx Parking Systems Car Park Systems of New York, Inc., et al., Case No. 0024319/2014 (Bronx Borough Supreme Ct.)

Exhibit 3: Pichardo v. Zewdu, Case No. 0105070/2009 (N.Y. County Supreme Ct.)

Exhibit 4: Pichardo v. Apple Bank for Savings, Case No. 0050145/2002 (Bronx Borough Supreme Ct.)

Exhibit 5: Pichardo v. CitiBank, Case No. 1677501/2001 (N.Y. County Civil Ct.)

Exhibit 6: Pichardo v. Teofilo, Case No. 0303275/2013 (N.Y. County Supreme Ct.)

Exhibit 7: Dep’t of Taxation and Finance v. Pichardo, Filing No. 1951262 (N.Y. County Clerk Tax Warrant)

Exhibit 8: Beth Israel Medical v. Pichardo, Filing No. 2617101 (N.Y. County Clerk Medical Lien)

Exhibit 9: *Citibank v. Pichardo*, Case No. 1677501/2001 (N.Y. County Civil Ct.)

Exhibit 10: *CitiBank v. Pichardo*, Filing No. CV13203009BX (N.Y. Civ. Ct. 2010)

Exhibit 11: Advertisement Placed by Plaintiff’s Lawyer on Classactionreporter.com

Exhibit 12: Liou et al v. Nestle Dreyer's Ice Cream Co., Case No. 1:19-CV-05762-DLC
(S.D.N.Y.)

Exhibit 13: *Spitzer v. Celestial Seasonings, Inc.*, Case No. 1:20-CV-02000-DLC
(S.D.N.Y.)

Exhibit 14: Advertisements Placed by Plaintiffs' Lawyer on Facebook.com

CONCLUSION

For the foregoing reasons, Only What You Need requests that the Court take judicial notice, pursuant to Federal Rule of Evidence 201, of the FDA guidelines, publications, websites, and Code of Federal Regulation sections attached as exhibits hereto.

Dated: July 27, 2020

Respectfully Submitted,

By: /s/ Jonathan G. Kortmansky
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